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March 9, 1983

William E. Leber, Chief
Operations and Administration
New Hampshire Aeronautics Commission
Concord Airport
Concord, NH 03301

Dear Mr. Leber:

By letter dated February 25, 1983, you have requested our opinion on whether the decision made by the Aeronautics Commission regarding the operation of "ultralights" at Skyhaven Airport "requires rule-making in accordance with the Administrative Procedures Act." (RSA 541). For the reasons set forth below, our response is in the affirmative.

RSA 541-A defines a rule as "each regulation, standard or other statement of general applicability adopted by an agency to (a) implement, interpret or make specific a statute enforced or administered by such agency or (b) prescribe or interpret an agency policy, procedure or practice requirement binding on persons outside the agency, whether members of the general public or personnel of other agencies." In our discussions, you have stated that the Aeronautics Commission's decision to prohibit ultralights "without an N-number assigned by the FAA" (Minutes of Aeronautics Commission meeting, October 13, 1982), was based on its concern for the safe operation of Skyhaven Airport. The prohibition of ultralights at Skyhaven Airport "implement[s] ... a statute administered by the [Aeronautics Commission]" (e.g. RSA 422:2, 422:8, 422:15) and "prescribe[s] an [Aeronautics Commission] policy ... binding on persons outside the agency." As such, the prohibition is a rule subject to the rule-making procedure prescribed in RSA 541-A. Moreover, if the "rule" is to have any effect, the requirements established in RSA 541-A must be fulfilled. Appeal of John Denman, 120 N.H. 568 (1980).



I trust this is responsive to your inquiry. Should you have any additional questions, please let me know.

Very truly yours,

Loretta S. Platt

Loretta S. Platt
Assistant Attorney General
Division of Legal Counsel

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